



**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

DONALD F. PARSONS, JR.
VICE CHANCELLOR

New Castle County CourtHouse
500 N. King Street, Suite 11400
Wilmington, Delaware 19801-3734

Submitted: January 6, 2006
Decided: April 13, 2006

Neal J. Levitsky, Esquire
Fox Rothschild LLP
Citizens Bank Center
919 N. Market Street, Suite 1300
P.O. Box 2323
Wilmington, DE 19899-2323

Ms. Suzan L. Swartz
7 Juniper Drive
Newark, DE 19702

Re: *MBNA America Bank, N.A. v. Suzan L. Swartz*,
Civil Action No. 1192-N

Dear Counsel and Ms. Swartz:

Pending before the Court is Plaintiff MBNA America Bank, N.A.'s ("MBNA") motion for summary judgment. MBNA seeks to confirm an arbitration award entered against Defendant Suzan L. Swartz in the amount of \$23,613.35.

On December 1, 2004, an arbitrator from the National Arbitration Forum found that the parties entered into a valid arbitration agreement and that this dispute was within the scope of the arbitration agreement. Having reviewed the evidence, the arbitrator issued an award of \$23,613.35.

The Court of Chancery has the authority to confirm arbitration awards.¹ The Court may vacate an arbitration award when:

(1) The award was procured by corruption, fraud or other undue means; (2) There was evident partiality by an arbitrator appointed as a neutral . . . or corruption in any of the arbitrators or misconduct prejudicing the rights of any party; (3) The arbitrators exceeded their powers . . .; (4) The arbitrators refused to postpone the hearing upon sufficient cause shown therefor, or refused to hear evidence material to the controversy . . .; or (5) There was no valid arbitration agreement, or the agreement to arbitrate had not been complied with²

The Court may not vacate an arbitration award upon any other grounds.³

Swartz does not contend that MBNA procured the award by fraud or that the arbitrator was corrupt or partial to MBNA. Likewise, Swartz neither argues that the arbitrator exceeded its power nor that it refused to postpone the hearing upon a showing of good cause. Swartz does appear to question the validity of the arbitration agreement, but her challenge is time barred.

¹ 10 *Del. C.* § 5713.

² 10 *Del. C.* § 5714.

³ *Malekzadeh v. Wyshock*, 611 A.2d 18, 21 (Del. Ch. 1992) (“In considering an application to vacate an arbitration award, the Court is limited to a determination of whether there exists any of the five statutory grounds for vacating an award, as set forth in 10 *Del. C.* § 5714.”).

A motion to vacate an arbitration award because there was no valid arbitration agreement must be made within 90 days of receipt of the award.⁴ The National Arbitration Forum mailed a copy of the award to Swartz on December 1, 2004 via first class mail. Swartz has not claimed that she did not receive the document. In addition, Swartz received another copy of the award on May 9, 2005, when the special process server served her with the Complaint and accompanying exhibits for this action. Defendant acknowledged receipt of the Complaint in a May 26, 2005 letter to the Court, but did not move to vacate the arbitration award. Thus, the earliest possible date on which the Court could find that Swartz sought to vacate the award is October 25, 2005, the day the Court heard argument on MBNA's summary judgment motion. Whether Swartz first received a copy of the award in December 2004 or in May 2005, her challenge to the existence or validity of an arbitration agreement is time barred by 10 *Del. C.* § 5714(b).

At the October 2005 argument, the Court requested that MBNA present the Court with a basis on which to enforce the arbitration award. Specifically, the Court requested a paper record showing MBNA as the holder of Swartz's account.

On January 5, 2006, MBNA provided the Court with a sworn affidavit from an employee of MBNA and copies of Swartz's account statements. The affidavit states that MBNA owned and maintained Swartz's account at all times following conversion of the

⁴ 10 *Del. C.* § 5714(b).

account from First Union to MBNA.⁵ Further, a customer information page reflects a conversion date of June 23, 2001. The conversion notwithstanding, the account statements retain the names “First Union” and “Wachovia”.

At argument and in her January 11, 2006 letter, Swartz contended that she was not aware that MBNA had taken over her account. Notably, however, Swartz never contends that the debt is not hers. Her only contention is that she believed First Union held her account and that she did not receive paperwork indicating that MBNA took over her account.

Having reviewed the submissions of the parties and considered the arbitrator’s award, the Court concludes that it is without power to vacate the award. Swartz’s challenge to the award is time barred and, even if it were not, it would likely be insufficient. The Court notes, however, the barely adequate paperwork provided by MBNA. The Court requested documents showing that MBNA holds Swartz’s account. Aside from the proffered affidavit and a nearly indecipherable customer information page, MBNA provided little relevant documentation. MBNA, and credit card companies like it, should be able to produce a copy of the card holder’s agreement with the initial credit card company or lender containing the relevant arbitration clause and documents evidencing the assignment of that agreement to the company seeking to enforce it.

⁵ Affidavit of Custodian of Records ¶¶ 5, 7.

Nevertheless, pursuant to 10 *Del C.* § 5713 and being without power to do otherwise, the Court hereby CONFIRMS the arbitration award against Defendant Suzan L. Swartz and in favor of Plaintiff MBNA America Bank, N.A. in the amount of \$23,613.35.⁶

IT IS SO ORDERED.

Sincerely,

/s/Donald F. Parsons, Jr.

Vice Chancellor

lef

⁶ MBNA's June 21, 2005 motion for default judgment remains for decision. Simultaneously with the entry of this order confirming the arbitration award pursuant to MBNA's motion for summary judgment, the Court denies the motion for default judgment as moot.